UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re LYFT SECURITIES LITIGATION	Case No. 19-cv-02690-HSG
	ORDER GRANTING KEINER'S MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND DENYING THE REMAINING MOTIONS FOR LEAD PLAINTIFF
	Re: Dkt. Nos. 9, 12, 20

On May 17, 2019, Plaintiff Matias Malig, as Trustee for the Malig Family Trust, filed the first of two securities class action lawsuits bringing claims individually and on behalf of others who acquired common stock of Lyft, Inc. ("Lyft" or "the Company") traceable to Lyft's Initial Public Offering ("IPO") on March 28, 2019. Dkt. No. 1 ("*Malig* Compl.").[1] The complaint asserts a claim under Section 11 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77k. Compl. ¶¶ 91–98. The complaint names as Defendants the Company, eleven individual defendants who served in executive positions for the Company or on the Company's Board, and twenty-nine underwriters who were "instrumental in soliciting and making the stock offered in the IPO available to the investing public." *Id.* ¶ 30.

Four competing motions for appointment as lead plaintiff, approval of lead counsel, and consolidations of securities class action cases were filed: (1) a motion by Rick Keiner ("Keiner") seeking appointment as lead plaintiff and approval of Block & Leviton as lead counsel, Dkt. No. 9; (2) a motion filed by Harold Tholen, Danilo Nunez, and Rakesh Khanna (collectively, "Lyft Investor Group") seeking appointment as lead plaintiffs and approval of Levi & Korsinky, LLP as

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[1] The Court subsequently related, and later consolidated, a second class action brought by Plaintiff Kevin Lewis. *See* Dkt. No. 7 (order relating Case No. 19-cv-3003-YGR), 47 (order consolidating the two actions).

1   lead counsel, Dkt. No. 12; (3) a motion by Deep Dinesh Patel ("Patel") seeking appointment as

2   lead plaintiff and approval of The Rosen Law Firm, P.A. as lead counsel, Dkt. No. 16; and (4) a

3   motion by Terry S. Bradford ("Bradford") seeking appointment as lead plaintiff and approval of

4   Pomerantz LLP as lead counsel, Dkt. No. 20. Subsequently, Patel withdrew his motion. *See* Dkt.

5   No. 50. On July 30, 2019, Keiner and the Lyft Investor Group filed briefs in opposition to the

6   competing motions for appointment of lead plaintiff. Dkt. Nos. 51, 52. On August 6, 2019,

7   Keiner filed a brief in further support of his initial motion. Dkt. No. 54. On the same day, the

8   Lyft Investor Group also filed a brief in further support of their initial motion. Dkt. No. 55.

9   Having carefully considered the relevant filings and authorities, the Court **GRANTS**

10   Keiner's motion (Dkt. No. 9) and **DENIES** the remaining unwithdrawn motions (Dkt. Nos. 12,

11   20). [2]

12   **I.   BACKGROUND**

13   Lyft is a rideshare company that sought to sought to revolutionize transportation by

14   launching its peer-to-peer marketplace for on-demand ridesharing. *Malig* Compl. ¶ 4. In order to

15   "establish a solid foothold in the bikeshare market and offer access to new transportation options

16   on the Lyft Platform," Lyft acquired Bikeshare Holdings LLC's technology and corporate

17   functions in November 2018. *Id.* ¶ 5.

18   On March 28, 2019, Lyft offered 32.5 million shares to the public through an IPO at a

19   price of $72.00 per share, generating total proceeds of $2.34 billion. *Id.* ¶ 6. In the Registration

20   Statement and Prospectus filed in connection with the IPO, Lyft estimated that its ridesharing

21   marketplace "is available to over 95% of the U.S. population, as well as in select cities in

22   Canada." *Id.* ¶ 7. The Company also represented that its "U.S. ridesharing market share was 39%

23   in December 2018, up from 22% in December 2016." *Id.*

24   Defendants allegedly made materially false, misleading, or incomplete statements in these

25   filings "because they failed to disclose, among other things, that: (1) Lyft's claimed ridesharing

26   position was overstated; (2) more than 1,000 of the bicycles in Lyft's rideshare program suffered

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28   [2] The Court finds this matter appropriate for disposition without oral argument and the matter is
     deemed submitted. See Civ. L.R. 7–1(b).

1 from safety issues that would lead to their recall; (3) Lyft's drivers were becoming disincentivized

2 from driving for Lyft; and (4) Lyft failed to warn investors that a labor disruption could affect its

3 operations." *Id.* ¶¶ 9, 75.

4 When the purported truths were revealed, Lyft's stock price fell and the putative class

5 members—who purchased stock traceable to the IPO—suffered financial losses. *Id.* ¶¶ 11–12.

6 For example, after the market closed on April 11, 2019, Uber, Lyft's competitor, filed with the

7 SEC its Form S-1, which "claimed a market share of greater than 65% in the United States and

8 Canada, a claim that further undermined Lyft's purported claim of 39% market share." *Id.* ¶¶ 77–

9 78. Several days later, the New York Times reported that Citi Bike was taking 1,000 bicycles out

10 of service in New York, and more in Washington, D.C. and San Francisco, in the wake of dozens

11 of reported injuries and safety concerns. *Id.* ¶ 79. "In response to these revelations, the

12 Company's shares fell sharply to under $57.00." *Id.* ¶ 80.

13 **II. APPOINTMENT OF LEAD PLAINTIFF**

14 The Private Securities Litigation Reform Act ("PSLRA") "instructs district courts to select

15 as lead plaintiff the one 'most capable of adequately representing the interests of class members.'"

16 *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (quoting 15 U.S.C. § 78u-4(a)(3)(B)(i)).

17 "The 'most capable' plaintiff—and hence the lead plaintiff—is the one who has the greatest

18 financial stake in the outcome of the case, so long as he meets the requirements of Rule 23." *Id.*

19 The Ninth Circuit interprets the PSLRA as establishing "a simple three-step process for

20 identifying the lead plaintiff pursuant to these criteria." *Id.*

21 **A. Notice Requirement**

22 Step One consists of meeting the PSLRA's notice requirement. *Id.* "The first plaintiff to

23 file an action covered by the [PSLRA] must post this notice 'in a widely circulated national

24 business-oriented publication or wire service.'" *Id.* (quoting 15 U.S.C. § 78u-4(a)(3)(A)(i)). The

25 notice must be published within 20 days of the complaint's filing. 15 U.S.C. § 78u-4(a)(3)(A)(i).

26 The notice must also alert putative class members "(I) of the pendency of the action, the claims

27 asserted therein, and the purported class period; and (II) that, not later than 60 days after the date

28 on which the notice is published, any member of the purported class may move the court to serve

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as lead plaintiff of the purported class." *Id.*

Here, notice was published in *Globe Newswire* on the same day that the complaint was filed. *Compare* Compl. *with* Dkt. No. 13–3. This complied with the PSLRA's 20-day filing deadline, and *Globe Newswire* is a "widely circulated [inter]national business-oriented news reporting service," as required. *Cavanaugh*, 306 F.3d at 729 (quoting 15 U.S.C. § 78u-4(a)(3)(A)(i)). The notice specifically announced the filing of the action against Lyft, described the asserted claim under the Securities Act, described the class as encompassing those who "purchased Lyft shares pursuant and/or traceable to Lyft's registration statement and prospectus," and notified putative class members that any motion to be appointed lead plaintiff must be filed no later than July 16, 2019. Dkt. No. 13-3. Accordingly, Step One's requirements are met.

B.   Largest Financial Stake in the Litigation

Step Two consists of identifying the presumptive lead plaintiff. *See Cavanaugh*, 306 F.3d at 729–30. There is a rebuttable presumption that the "most adequate plaintiff" is the one who "(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i); (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Thus, once the filing requirement of subsection (a)(3)(B)(iii)(I)(aa) is met, "the district court must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit." *Cavanaugh*, 306 F.3d at 730. Keiner, the Lyft Investor Group, and Bradford all filed their motions to be appointed lead plaintiff(s) on July 16, 2019, satisfying subsection (aa).

The Court must then determine who has the largest financial interest in the litigation. Keiner argues that he has the highest total losses: $223,049.76. Dkt. No. 49.[3] Lyft Investor Group

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[3] Lyft Investor Group argues that the Court should not accept Keiner's amended certification because it was filed on July 29, 2019, after the deadline to move to be appointed lead plaintiff. Dkt. No. 52 at 13. While it is true that the amended certification was filed later, Keiner timely filed his motion on July 16, 2019, and upon noticing the scrivener's errors in his certification, submitted the amended certification prior to any notification of these errors by other movants. Keiner's motion was timely, and the Court will consider the amended certification. *Accord In re Solar City Corp. Sec. Litig.*, No. 16-CV-04686-LHK, 2017 WL 363274, at *6 (N.D. Cal. Jan. 25, 2017) ("[T]he error made when transferring stock prices from Plaintiff's brokerage account to

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1   argues that Keiner overstates his losses because he includes unrecoverable losses due to shares that

2   were sold prior to any disclosure of the misstatement. Dkt. No. 52 at 7. They argue that Keiner's

3   "actual financial interest in the litigation is only $50,407.90 based on the 7,700 shares that he

4   purchased and held at the time at least one of the alleged corrective disclosures entered the market

5   to proximately cause his losses." Dkt. No. 52 at 9. Lyft Investor Group alleges a loss of

6   $163,481.24 (of which $91,050.00 is attributable to Harold Tholen, $40,673.00 is attributable to

7   Rakesh Khanna, and $31,758.24 is attributable to Danilo Nunez), Dkt. No. 13-2, and Bradford

8   alleges a loss of $8,335, Dkt. No. 21-1. Underlying the movants' disagreement is the

9   methodology used to calculate the largest financial interest.

10   "The Ninth Circuit has declined to endorse a particular method" to calculate which movant

11   has the largest financial stake in a securities class action. *Nicolow v. Hewlett Packard Co.*, No.

12   12-cv-05980-CRB, 2013 WL 792642, at *4 (N.D. Cal. Mar. 4, 2013). Instead, district courts

13   "may select accounting methods that are both rational and consistently applied." *Cavanaugh*, 306

14   F.3d at 730 n.4. Courts in this district primarily have relied on two methods: "[m]ethods in the

15   first category equate financial interest with actual economic losses suffered. In contrast, a second

16   category of methods equates largest financial interest with potential recovery." *Perlmutter v.*

17   *Intuitive Surgical, Inc.*, No. 10-CV-03451-LHK, 2011 WL 566814, at *3 (N.D. Cal. Feb. 15,

18   2011) (internal citations omitted).

19   Within the first category, courts have used the *Lax-Olsten* four-factor test to approximate

20   economic losses. *See e.g.*, *Melucci v. Corcept Therapeutics Inc.*, No. 19-CV-01372-LHK, 2019

21   WL 4933611, at *3 (N.D. Cal. Oct. 7, 2019) (noting the "four factors that were first introduced in

22   *Lax v. First Merchants Acceptance Corp.*, 1997 WL 461036, at *5 (N.D. Ill. Aug. 11[,] 1997), and

23   *In re Olsten Corporation Securities Litigation*, 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998)."). These

24   four factors are "(1) the number of shares purchased during the class period; (2) the number of net

25   shares purchased during the class period; (3) the total net funds expended during the class period;

26   and (4) the approximate losses suffered during the class period." *In re Olsten*, 3 F. Supp. 2d at

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      Fish's motion was clearly an inadvertent error," and not one to be held against the movant).

1   295. Courts then consider the totality of these factors in order to determine an approximate loss

2   for each movant. Many courts consider the fourth factor, approximate loss, the most important.

3   *See Markette v. XOMA Corp.*, No. 15-CV-03425-HSG, 2016 WL 2902286, at *5 n.4 (N.D. Cal.

4   May 13, 2016); *Bodri v. Gopro, Inc.*, No. 16-CV-00232-JST, 2016 WL 1718217, at *4 (N.D. Cal.

5   Apr. 28, 2016); *In re Diamond Foods, Inc., Sec. Litig.*, 281 F.R.D. 405, 408 (N.D. Cal. 2012).

6   Other courts in this district have applied a different method that looks to the shares

7   purchased during the class period and retained at the end of the class period and calculates the

8   total net loss considering only those securities. *See Mulligan v. Impax Labs., Inc.*, No. C-13-1037-

9   EMC, 2013 WL 3354420, at *6 (N.D. Cal. Jul. 2, 2013) (citing *Eichenholtz v. Verifone Holdings,*

10   *Inc.*, No. C 07-6140-EMC, 2008 WL 3925289, at *10–14 (N.D. Cal. Aug. 22, 2008)). The

11   advantage of this "retained shares" method is that it "look[s] to losses experienced due to the

12   shares that the plaintiff was holding at the time the fraud was disclosed, and thus focus[es] on

13   losses caused when stock purchased at artificially inflated prices decreases in value due to the

14   disclosure of the fraud. This metric thereby excludes losses caused by normal market fluctuations

15   prior and unrelated to the disclosure of the fraud." *Id.* The reason for this method is intuitive:

16   "[o]ne's 'interest' in a litigation is rather directly tied to what one might recover." *In re McKesson*

17   *HBOC, Inc. Sec. Litig.*, 97 F. Supp. 2d 993, 997 (N.D. Cal. 1999).

18   But courts have noted that the retained shares method works best where there is a

19   "relatively constant fraud premium through the class period." *Mulligan*, 2013 WL 3354420 at *7.

20   In other words, it will most accurately calculate net loss where there are not multiple partial

21   disclosures that reveal the purported fraud during the class period. *See Melucci*, 2019 WL

22   4933611, at *3 ("[C]ourts have . . . explained that a measure of net shares purchased and a retained

23   shares calculation are less useful analytical tools where gradual disclosures are involved, because

24   those methods assume a constant fraud premium throughout the class period.") (internal citation

25   omitted); *Markette*, 2016 WL 2902286, at *6 (finding the retained shares method accurately

26   calculates the loss amount where "Plaintiff's complaint alleges that a single disclosure revealed

27   Defendants' purported fraud and does not suggest that any partial disclosures occurred during the

28   class period.").

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1   Lyft Investor Group argues that Keiner's alleged loss "significantly overstates his financial

2   interests in the outcome of the lawsuit" because it includes shares sold prior to any corrective

3   disclosure, and losses from such sales are not recoverable. Dkt. No. 52 at 2. Lyft Investor Group

4   essentially argues that the Court should calculate the largest financial interest using a retained shares

5   method in order to determine recoverable losses. The Court disagrees with this approach.

6   The economic loss method most accurately determines the greatest financial interest on the

7   facts presented here. The complaints filed in both actions allege that a series of disclosures corrected

8   misstatements in the Offering Documents. *See* Dkt. No. 1 ("*Malig* Compl."), Case No. 19-cv-03003,

9   Dkt. No. 1 ("*Lewis* Compl."). Minimally, the complaints allege a disclosure after April 11, 2019 of

10   Uber's market share in its Form S-1, *Malig* Compl. ¶ 78, *Lewis* Compl. ¶ 35; a disclosure on April

11   15, 2019 that 1,000 bicycles were being removed from Lyft's rideshare program, *Malig* Compl.

12   ¶ 79, *Lewis* Compl. ¶ 37; and a disclosure on May 5, 2019 of a labor disruption, *Malig* Compl. ¶ 81,

13   *Lewis* Compl. ¶ 40. These partial disclosures during the class period suggest that there likely was

14   not a constant fraud premium, such that a retained shares approach would not result in the most

15   accurate loss calculation in this case. It would be very difficult for the Court to assess the effect of

16   a non-constant fraud premium in determining loss. This reality is confirmed by Lyft Investor

17   Group's own argument, which calculates a purported loss based on Keiner's shares held at the time

18   of the first disclosure, but fails to account for the remaining partial disclosures. *See* Dkt. No. 52 at

19   9. This assessment may end up being complex, and almost certainly will require evaluation of the

20   parties' damages experts at a later stage of the proceedings. *Accord McKesson*, 97 F. Supp. 2d at

21   997–98 (noting the infeasibility of conducting a damages inquiry at the lead plaintiff appointment

22   stage).

23   Having found that applying the economic loss method is appropriate in this case, the Court

24   finds that Keiner is presumptively the most adequate plaintiff. Applying the *Lax-Olsten* factors for

25   the three movants results in the following calculations:

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Movant	(1) Shares Purchased	(2) Net Shares Purchased	(3) Net Funds Expended	(4) Approximate Loss
Keiner	121,352	200	$331,607[4]	($223,049)
Lyft Investment Group	9,244	9,244	$687,168	($163,796)
Harold Tholen	5,000	5,000	$360,000	($91,050)
Rakesh Khanna	2,800	2,800	$201,600	($40,673)
Danilo Nunez	1,744	1,744	$125,568	($31,758)
Bradford	533	533	$37,005	($8,335)

The fourth factor, approximate loss, is generally given the most weight in the analysis, as noted above. Here, Keiner's approximate loss is nearly $60,000 more than Lyft Investor Group and over double that of the largest shareholder in Lyft Investment Group, Harold Tholen.[5] The Court accordingly finds that Keiner has the largest financial interest.

C. Keiner's Typicality and Adequacy

Next, a presumptive lead plaintiff has the burden of setting forth a prima facie case that he can satisfy the class representative requirements of Rule 23(a), typicality and adequacy. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *Cavanaugh*, 306 F.3d at 730. Competing movants can rebut this showing by setting forth evidence that the presumptive lead plaintiff "will not fairly and adequately protect the interests of the class" or "is subject to unique defenses that render such plaintiff incapable of adequately representing the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Keiner represents that he is unaware of any conflicts between his claims and those asserted on behalf of the putative class, or of any unique defenses, that would render him atypical or unable to adequately protect the interest of the class. Dkt. No. 9 at 9. The Court agrees that Keiner's injuries, stemming from the purchase of Lyft shares at artificially high prices after the Company's alleged misstatements in the offering documents, are typical of the § 11 claims alleged in the complaints. Further, as explained further below, the Court does not find Keiner susceptible to unique defenses that would make him inadequate to represent the class in this action.

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[4] The Court was not provided this information, and calculated it based on Keiner's amended certification. *See* Dkt. No. 49-1. As such, this figure is an estimate that may contain some rounding error since the share prices were provided only to two decimal places.
[5] Because Keiner's approximate loss is greater than the aggregate loss of the Lyft Investor Group, the Court need not address Keiner's argument that only the individual with the highest approximately loss should be considered instead of the entire group. *See* Dkt. No. 51 at 3.

1   Lyft Investor Group presents several arguments against Keiner's typicality and adequacy.

2   It first argues that Keiner would be an atypical and inadequate lead plaintiff because he sold most

3   of the shares he purchased throughout the class period, potentially making him subject to an

4   affirmative defense of negative causation. Dkt. No. 52 at 10. They allege that "[w]hether or not

5   these issues will in fact be raised during the litigation is unknown; however, the critical point is

6   that they may be raised and if so, will bec[o]me a distraction to the litigation and jeopardize the

7   Class's recovery." *Id.* at 13. "[N]egative causation" is an affirmative defense under § 11 that

8   requires a defendant to show "that the depreciation in value of a plaintiff's stock resulted from

9   factors other than the alleged material misstatement." *Hildes v. Arthur Andersen LLP*, 734 F.3d

10   854, 860 (9th Cir. 2013) (quotations and citations omitted). Lyft Investor Group points out that

11   Keiner sold many shares prior to the first alleged partial disclosure, and argues that he therefore

12   cannot recover any losses from those sales.

13   While this could end up being true, it does not show that Keiner is atypical or inadequate

14   to serve as lead plaintiff. Importantly, Keiner held shares throughout the period: at least 7,700

15   shares (as alleged by Lyft Investor Group) before the initial partial disclosure, a fluctuating

16   number of shares between partial disclosures, and 200 shares at the end of the class period. There

17   likely are many class members who sold shares prior to any partial disclosure or in between partial

18   disclosures who are similarly susceptible to a negative loss causation defense. Moreover, this is a

19   highly fact-intensive affirmative defense, and the Court is not aware of any case in which a court

20   has tried to definitively resolve its applicability at this stage of the proceedings. On balance, the

21   Court does not find that the potential application of this defense down the road makes Keiner

22   atypical or inadequate for purposes of choosing a lead plaintiff. *Accord In re Lendingclub Sec.*

23   *Litig.*, 282 F. Supp. 3d 1171, 1181 (N.D. Cal. 2017) (certifying a class and finding typicality

24   despite lead plaintiff's susceptibility to an affirmative defense of negative loss causation); *Levine*

25   *v. AtriCure, Inc.*, 508 F. Supp. 2d 268, 272–73 (S.D.N.Y. 2007) (noting that "[b]ecause an

26   analysis of causation is often fact-intensive, negative causation is generally established by a

27   defendant on a motion for summary judgment or at trial," not at the motion to appoint lead

28   plaintiff stage).

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1   Lyft Investor Group also cites *Reinschmidt v. Zillow, Inc.*, where the court denied an "in-

2   and-out" trader and day trader's motion for appointment as lead plaintiff because it would open

3   the movant up to unique affirmative defenses. No. C12-2084-RSM, 2013 WL 1092129, at *4

4   (W.D. Wash. Mar. 14, 2013). While the Court recognizes that Keiner's trading activity could be

5   read to suggest day trading, courts have based the denial of lead plaintiff status in such situations

6   on the difficulty of showing reliance, a required element under §§ 10(b) and 20(a) of the Securities

7   Exchange Act of 1934. *See, e.g.*, *Reinschmidt*, 2013 WL 1092129 at *4 (explaining that "trading

8   on market volatility belies any true reliance on company reports or even on the integrity of the

9   stock price itself"); *In re Silicon Storage Tech., Inc.*, No. C 05-0295-PJH, 2005 U.S. Dist. LEXIS

10   45246, at *25–26 (N.D. Cal. 2005) (noting that it would be difficult to show reliance if the movant

11   sells much of the stock before any corrective disclosure). Importantly, reliance is not an element

12   of a § 11 claim, such that the rationale advanced by Lyft Investor Group does not apply here.

13   Finally, Lyft Investor Group argues that the Keiner is inadequate due to errors in his filings

14   and certificates. *See* Dkt. Nos. 52 at 10–14. Lyft Investor Group alleges that Keiner failed to

15   include some transactions that resulted in substantial gains that could alter the economic loss

16   calculations bearing on his adequacy to represent the class. Dkt. No. 52 at 11 (chart indicating

17   specific sales). Importantly, Lyft Investor Group points to Keiner's initial certification, not the

18   amended certification which identifies each of the sales that Lyft Investor Group argues were not

19   included. *See* Dkt. No. 49-1 at 3, 5. As noted in footnote 2 above, Keiner's inadvertent clerical

20   error does not preclude the Court from considering the amended certification, especially where

21   these transactions were included in Keiner's initial filing's loss chart. Keiner further certified, at

22   the Court's request, that the amended certification and loss chart display the same underlying data

23   other than minor differences due to rounding, and use the IPO price to calculate approximate loss

24   consistent with 15 U.S.C. § 77k(e). *See* Dkt. No. 63. Lyft Investor Group also argues that Keiner

25   failed to include the sale of 200 shares on May 20, 2019. Dkt. No. 52 at 12. However, as Keiner

26   notes, the *Malig* complaint was filed on May 17, 2019, and sales made after the end of the class

27   period need not be included. The Court further disregards as trivial movants' arguments that

28   typographical errors in their competitiors' motions or certificates are meaningfully indicative of

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1   inadequacy.

2   Lyft Investor Group alternatively asks the Court to allow limited discovery into Keiner's

3   adequacy to be lead plaintiff. Dkt. No. 52 at 14 (citing 15 U.S.C. § 77z-1(a)(3)(B)(iv), which

4   allows for discovery "only if the [challenger] first demonstrates a reasonable basis for a finding

5   that the presumptively most adequate plaintiff is incapable of adequately representing the class").

6   Because Lyft Investor Group fails to demonstrate a reasonable basis to find Keiner incapable of

7   adequately representing the class, the Court denies this request.

8   **III.   APPOINTMENT OF LEAD COUNSEL**

9   Keiner has moved for approval of its selection of Block & Leviton LLP as lead counsel.

10   Mot. at 9–10; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(v) ("The most adequate plaintiff shall, subject

11   to the approval of the court, select and retain counsel to represent the class."). The Court defers to

12   Keiner's choice of lead counsel because his choice is not "so irrational, or so tainted by self-

13   dealing or conflict of interest, as to cast genuine and serious doubt on [his] willingness or ability to

14   perform the functions of lead plaintiff." *Cavanaugh*, 306 F.3d at 733; *see also id.* at 739 n.11

15   (noting that "Congress gave the lead plaintiff, and not the court, the power to select a lawyer for

16   the class"). Block & Leviton LLP has extensive experience as counsel in securities class actions.

17   *See* Dkt. Nos. 9-2, Ex. D (firm resume). The Court thus approves Keiner's selection of counsel.

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IV.   CONCLUSION

For the foregoing reasons, the Court **GRANTS** Keiner's motion. *See* Dkt. No. 9.[6] All pending unwithdrawn motions are **DENIED**. *See* Dkt. Nos. 12, 20. Keiner is appointed as lead plaintiffs for the putative class. Block & Leviton LLP is further approved as lead counsel for the putative class.

The Court further sets an initial case management conference on March 31, 2020 at 2:00p.m. in Oakland, Courtroom 2, 4th Floor. The Court directs the parties to meet and confer and submit a joint case management statement by March 24, 2020.

IT IS SO ORDERED.

Dated: 3/4/2020

HAYWOOD S. GILLIAM, JR.
United States District Judge

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[6] Keiner also moved for consolidation of related actions. That aspect of his motion is moot in light of the Court's July 25, 2019 order. *See* Dkt. No. 47.